

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHEMI SPA	:	CIVIL ACTION
	:	
v.	:	
	:	
GLAXOSMITHKLINE	:	NO. 04-4545

MEMORANDUM

Bartle, J. September , 2005

This is an antitrust action for unlawful monopolization pursuant to § 2 of the Sherman Act and § 4 of the Clayton Act. 15 U.S.C. §§ 2, 15. Before the court is the motion of defendant GlaxoSmithKline ("GSK") for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the grounds that this action is barred by the applicable statute of limitations.

We are denying the motion for the reasons set forth in this court's Memorandum and Order dated February 8, 2005 in which we denied GSK's motion for judgment on the pleadings. See Chemi SpA v. GlaxoSmithKline, 356 F. Supp. 2d 495 (E.D. Pa. 2005). There we held that "an antitrust claim based on baseless litigation requires proof that the litigation was unsuccessful, which can only be determined upon the termination of the initial action." Id. at 500. Under the undisputed facts of record, GSK cannot establish that Chemi SpA's action was untimely.

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ORDER

AND NOW, this day of September, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant GlaxoSmithKline for summary judgment is DENIED.

BY THE COURT:

J.